

AN ACT concerning regulation.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Auction License Act is amended by changing Sections 5-10, 10-1, 10-5, 10-15, 10-20, 10-27, 10-30, 10-35, 10-40, 10-45, 10-50, 20-5, 20-15, 20-20, 20-25, 20-30, 20-35, 20-40, 20-45, 20-50, 20-55, 20-60, 20-65, 20-70, 20-75, 20-80, 20-90, 20-95, 30-5, 30-10, 30-15, 30-20, 30-25, 30-30, 30-40, 30-45, 30-50, and 30-55 and by adding Section 20-100 as follows:

(225 ILCS 407/5-10)

(Section scheduled to be repealed on January 1, 2010)

Sec. 5-10. Definitions. As used in this Act:

"Advertisement" means any written, oral, or electronic communication that contains a promotion, inducement, or offer to conduct an auction or offer to provide an auction service, including but not limited to brochures, pamphlets, radio and television scripts, telephone and direct mail solicitations, electronic media, and other means of promotion.

"Advisory Board" means the Auctioneer Advisory Board.

"Associate auctioneer" means a person who conducts an auction, but who is under the direct supervision of, and is sponsored by, a licensed auctioneer or auction firm.

"Auction" means the sale or lease of property, real or personal, by means of exchanges between an auctioneer or associate auctioneer and prospective purchasers or lessees, which consists of a series of invitations for offers made by the auctioneer or associate auctioneer and offers by prospective purchasers or lessees for the purpose of obtaining an acceptable offer for the sale or lease of the property, including the sale or lease of property via mail, telecommunications, or the Internet.

"Auction contract" means a written agreement between an auctioneer, associate auctioneer, or auction firm and a seller or sellers.

"Auction firm" means any corporation, partnership, or limited liability company that acts as an auctioneer and provides an auction service.

"Auction school" means any educational institution, public or private, which offers a curriculum of auctioneer education and training approved by the Department ~~Office of Banks and Real Estate~~.

"Auction service" means the service of arranging, managing, advertising, or conducting auctions.

"Auctioneer" means a person or entity who, for another, for a fee, compensation, commission, or any other valuable consideration at auction or with the intention or expectation of receiving valuable consideration by the means of or process of an auction or sale at auction or providing an auction

service, offers, negotiates, or attempts to negotiate an auction contract, sale, purchase, or exchange of goods, chattels, merchandise, personal property, real property, or any commodity that may be lawfully kept or offered for sale by or at auction.

~~"Commissioner" means the Commissioner of the Office of Banks and Real Estate or his or her designee.~~

"Department" means the Department of Financial and Professional Regulation.

~~"Director" means the Director of Auction Regulation.~~

"Goods" means chattels, movable goods, merchandise, or personal property or commodities of any form or type that may be lawfully kept or offered for sale.

"Licensee" means any person licensed under this Act.

"Managing auctioneer" means any person licensed as an auctioneer who manages and supervises licensees sponsored by an auction firm or auctioneer.

~~"OBRE" means the Office of Banks and Real Estate.~~

"Person" means an individual, association, partnership, corporation, or limited liability company or the officers, directors, or employees of the same.

"Pre-renewal period" means the 24 months prior to the expiration date of a license issued under this Act.

"Secretary" means the Secretary of the Department of Financial and Professional Regulation or his or her designee.

"Sponsoring auctioneer" means the auctioneer or auction

firm who has issued a sponsor card to a licensed associate auctioneer or auctioneer.

"Sponsor card" means the temporary permit issued by the sponsoring auctioneer certifying that the licensee named thereon is employed by or associated with the sponsoring auctioneer and the sponsoring auctioneer shall be responsible for the actions of the sponsored licensee.

(Source: P.A. 91-603, eff. 1-1-00; 92-16, eff. 6-28-01.)

(225 ILCS 407/10-1)

(Section scheduled to be repealed on January 1, 2010)

Sec. 10-1. Necessity of license; exemptions.

(a) It is unlawful for any person, corporation, limited liability company, partnership, or other entity to conduct an auction, provide an auction service, hold himself or herself out as an auctioneer, or advertise his or her services as an auctioneer in the State of Illinois without a license issued by the Department ~~OBRE~~ under this Act, except at:

(1) an auction conducted solely by or for a not-for-profit organization for charitable purposes;

(2) an auction conducted by the owner of the property, real or personal;

(3) an auction for the sale or lease of real property conducted by a licensee under the Real Estate License Act, or its successor Acts, in accordance with the terms of that Act;

(4) an auction conducted by a business registered as a market agency under the federal Packers and Stockyards Act (7 U.S.C. 181 et seq.) or under the Livestock Auction Market Law;

(5) an auction conducted by an agent, officer, or employee of a federal agency in the conduct of his or her official duties; and

(6) an auction conducted by an agent, officer, or employee of the State government or any political subdivision thereof performing his or her official duties.

(b) Nothing in this Act shall be construed to apply to a new or used vehicle dealer or a vehicle auctioneer licensed by the Secretary of State of Illinois, or to any employee of the licensee, who is a resident of the State of Illinois, while the employee is acting in the regular scope of his or her employment for the licensee while conducting an auction that is not open to the public, provided that only new or used vehicle dealers, rebuilders, automotive parts recyclers, scrap processors, or out-of-state salvage vehicle buyers licensed by the Secretary of State or licensed by another jurisdiction may buy property at the auction, or to sales by or through the licensee.

(c) Nothing in this Act shall be construed to prohibit a person under the age of 18 from selling property under \$250 in value while under the direct supervision of a licensed auctioneer.

(d) Nothing in this Act, except Section 10-27, shall be construed to apply to a person while providing an Internet auction listing service as defined in Section 10-27.

(Source: P.A. 91-603, eff. 1-1-00; 92-798, eff. 8-15-02.)

(225 ILCS 407/10-5)

(Section scheduled to be repealed on January 1, 2010)

Sec. 10-5. Requirements for auctioneer license; application. Every person who desires to obtain an auctioneer license under this Act shall:

(1) apply to the Department ~~OBRE~~ on forms provided by the Department ~~OBRE~~ accompanied by the required fee;

(2) be at least 18 years of age;

(3) have attained a high school diploma or successfully completed an equivalent course of study determined by an examination conducted by the Illinois State Board of Education;

(4) ~~personally take and~~ pass a written examination authorized by the Department ~~OBRE~~ to prove competence, including but not limited to general knowledge of Illinois and federal laws pertaining to personal property contracts, auctions, real property, ~~relevant provisions of Article 4 of the Uniform Commercial Code,~~ ethics, and other topics relating to the auction business; and

(5) submit to the Department ~~OBRE~~ a properly completed 45-Day Permit Sponsor Card on forms provided by the

Department ~~OBRE~~.

(Source: P.A. 91-603, eff. 1-1-00.)

(225 ILCS 407/10-15)

(Section scheduled to be repealed on January 1, 2010)

Sec. 10-15. Requirements for associate auctioneer license; application. Every person who desires to obtain an associate auctioneer license under this Act shall:

(1) apply to the Department ~~OBRE~~ on forms provided by the Department ~~OBRE~~ accompanied by the required fee;

(2) be at least 18 years of age;

(3) have attained a high school diploma or successfully completed an equivalent course of study determined by an examination conducted by the Illinois State Board of Education;

(4) ~~personally take and~~ pass a written examination authorized by the Department ~~OBRE~~ to prove competence, including but not limited to general knowledge of Illinois and federal laws pertaining to personal property contracts, auctions, real property, ~~relevant provisions of Article 4 of the Uniform Commercial Code,~~ ethics, and other topics relating to the auction business; and

(5) submit to the Department ~~OBRE~~ a properly completed 45-day permit sponsor card on forms provided by the Department ~~OBRE~~.

(Source: P.A. 91-603, eff. 1-1-00.)

(225 ILCS 407/10-20)

(Section scheduled to be repealed on January 1, 2010)

Sec. 10-20. Requirements for auction firm license; application. Any corporation, limited liability company, or partnership who desires to obtain an auction firm license shall:

(1) apply to the Department ~~OBRE~~ on forms provided by the Department ~~OBRE~~ accompanied by the required fee; and

(2) provide evidence to the Department ~~OBRE~~ that the auction firm has a properly licensed managing auctioneer.

(Source: P.A. 91-603, eff. 1-1-00.)

(225 ILCS 407/10-27)

(Section scheduled to be repealed on January 1, 2010)

Sec. 10-27. Registration of Internet Auction Listing Service.

(a) For the purposes of this Section:

(1) "Internet Auction Listing Service" means a website on the Internet, or other interactive computer service that is designed to allow or advertised as a means of allowing users to offer personal property or services for sale or lease to a prospective buyer or lessee through an on-line bid submission process using that website or interactive computer service and that does not examine, set the price, or prepare the description of the personal property or

service to be offered, or in any way utilize the services of a natural person as an auctioneer.

(2) "Interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet.

(b) It is unlawful for any person, corporation, limited liability company, partnership, or other entity to provide an Internet auction listing service in the State of Illinois for compensation without being registered with the Department ~~Office of Banks and Real Estate (OBRE)~~ when:

(1) the person, corporation, limited liability company, partnership, or other entity providing the Internet auction listing service is located in the State of Illinois;

(2) the prospective seller or seller, prospective lessor or lessor, or prospective purchaser or purchaser is located in the State of Illinois and is required to agree to terms with the person, corporation, limited liability company, partnership, or other entity providing the Internet auction listing service, no matter where that person, corporation, limited liability company, partnership, or other entity is located; or

(3) the personal property or services offered for sale or lease are located or will be provided in the State of

Illinois.

(c) Any person, corporation, limited liability company, partnership, or other entity that provides an Internet auction listing service in the State of Illinois for compensation under any of the circumstances listed in subsection (b) shall register with the Department ~~OBRE~~ on forms provided by the Department ~~OBRE~~ accompanied by the required fee as provided by rule. Such registration shall include information as required by the Department ~~OBRE~~ and established by rule as the Department ~~OBRE~~ deems necessary to enable users of the Internet auction listing service in Illinois to identify the entity providing the service and to seek redress or further information from such entity. The fee shall be sufficient to cover the reasonable costs of the Department ~~OBRE~~ in administering and enforcing the provisions of this Section. The registrant shall be required to certify:

(1) that the registrant does not act as the agent of users who sell items on its website, and acts only as a venue for user transactions;

(2) that the registrant requires sellers and bidders to register with the website and provide their name, address, telephone number and e-mail address;

(3) that the registrant retains such information for a period of at least 2 years;

(4) that the registrant retains transactional information consisting of at least seller identification,

high bidder identification, and item sold for at least 2 years from the close of a transaction, and has a mechanism to identify all transactions involving a particular seller or buyer;

(5) that the registrant has a mechanism to receive complaints or inquiries from users;

(6) that the registrant adopts and reasonably implements a policy of suspending, in appropriate circumstances, the accounts of users who, based on the registrant's investigation, are proven to have engaged in a pattern of activity that appears to be deliberately designed to defraud consumers on the registrant's website; and

(7) that the registrant will comply with the Department ~~OBRE~~ and law enforcement requests for stored data in its possession, subject to the requirements of applicable law.

(d) The Department ~~OBRE~~ may refuse to accept a registration which is incomplete or not accompanied by the required fee. The Department ~~OBRE~~ may impose a civil penalty not to exceed \$10,000 upon any Internet auction listing service that intentionally fails to register as required by this Section, and may impose such penalty or revoke, suspend, or place on probation or administrative supervision the registration of any Internet auction listing service that:

(1) intentionally makes a false or fraudulent material representation or material misstatement or

misrepresentation to the Department ~~OBRE~~ in connection with its registration, including in the certification required under subsection (c);

(2) is convicted of any crime, an essential element of which is dishonesty, fraud, larceny, embezzlement, or obtaining money, property, or credit by false pretenses or by means of a confidence game; or is convicted in this or another state of a crime that is a felony under the laws of this State; or is convicted of a felony in a federal court;

(3) is adjudged to be a person under legal disability or subject to involuntary admission or to meet the standard for judicial admission as provided in the Mental Health and Developmental Disabilities Code;

(4) has been subject to discipline by another state, the District of Columbia, a territory of the United States, a foreign nation, a governmental agency, or any other entity authorized to impose discipline if at least one of the grounds for that discipline is the same as or equivalent to one of the grounds for discipline set forth in this Section or for failing to report to the Department ~~OBRE~~, within 30 days, any adverse final action taken against the registrant by any other licensing or registering jurisdiction, government agency, law enforcement agency, or court, or liability for conduct that would constitute grounds for action as set forth in this Section;

(5) fails to make available to the Department ~~OBRE~~ personnel during normal business hours all records and related documents maintained in connection with the activities subject to registration under this Section;

(6) makes or files false records or reports in connection with activities subject to registration, including but not limited to false records or reports filed with State agencies;

(7) fails to provide information within 30 days in response to a written request made by the Department ~~OBRE~~ to a person designated in the registration for receipt of such requests; or

(8) fails to perform any act or procedure described in subsection (c) of this Section.

(e) Registrations issued pursuant to this Section shall expire on September 30 of odd-numbered years. A registrant shall submit a renewal application to the Department ~~OBRE~~ on forms provided by the Department ~~OBRE~~ along with the required fee as established by rule.

(f) Operating an Internet auction listing service under any of the circumstances listed in subsection (b) without being currently registered under this Section is declared to be adverse to the public welfare, to constitute a public nuisance, and to cause irreparable harm to the public welfare. The Secretary ~~Commissioner of OBRE~~, the Attorney General of the State of Illinois, the State's Attorney of any county in the

State, or any other person may maintain an action and apply for injunctive relief in any circuit court to enjoin the person or entity from engaging in such practice.

(g) The provisions of Sections 20-25, 20-30, 20-35, 20-40, 20-45, 20-50, 20-55, 20-60 and 20-75 of this Act shall apply to any actions of the Department ~~OBRE~~ exercising its authority under subsection (d) as if a person required to register under this Section were a person holding or claiming to hold a license under this Act.

(h) The Department ~~OBRE~~ shall have the authority to adopt such rules as may be necessary to implement or interpret the provisions of this Section.

(Source: P.A. 92-798, eff. 8-15-02.)

(225 ILCS 407/10-30)

(Section scheduled to be repealed on January 1, 2010)

Sec. 10-30. Expiration, renewal, and continuing education.

(a) License expiration dates, renewal periods, renewal fees, and procedures for renewal of licenses issued under this Act shall be set by rule of the Department. An entity may renew its license by paying the required fee and by meeting the renewal requirements adopted by the Department under this Section. ~~A license issued under this Act shall expire every 2 years beginning on September 30, 2001. The OBRE shall issue a renewal license without examination to an applicant upon submission of a completed renewal application and payment of~~

~~the required fee.~~

(b) All renewal applicants must provide proof as determined by the Department of having met the continuing education requirements set forth by the Department by rule. At a minimum, the rules shall require an applicant for renewal licensure as an auctioneer or associate auctioneer to provide proof of the completion of at least 12 hours of continuing education during the pre-renewal period preceding the expiration date of the license from schools approved by the Department, as established by rule. ~~The OBRE shall develop a program for continuing education as established in Article 25 of this Act. No auctioneer or associate auctioneer shall receive a renewal license without completing 12 hours of approved continuing education course work during the pre-renewal period prior to the expiration date of the license from continuing education schools that are approved by the OBRE, as established in Article 25 of this Act. The applicant shall verify on the application that he or she:~~

~~(1) has complied with the continuing education requirements; or~~

~~(2) is exempt from the continuing education requirements because it is his or her first renewal and he or she was initially licensed as an auctioneer or associate auctioneer during the pre-renewal period prior to the expiration date.~~

(c) The Department, in its discretion, may waive

enforcement of the continuing education requirements of this Section and shall adopt rules defining the standards and criteria for such waiver. ~~A renewal applicant may request a waiver of the continuing education requirements under subsection (d) of this Section, but shall not practice as an auctioneer or associate auctioneer until such waiver is granted and a renewal license is issued.~~

~~(d) (Blank). The Commissioner, with the recommendation of the Advisory Board, may grant a renewal applicant a waiver from all or part of the continuing education requirements for the pre-renewal period if the applicant was not able to fulfill the requirements as a result of the following conditions:~~

- ~~(1) Service in the armed forces of the United States during a substantial part of the pre-renewal period.~~
- ~~(2) Service as an elected State or federal official.~~
- ~~(3) Service as a full-time employee of the OBRE.~~
- ~~(4) Other extreme circumstances as recommended by the Advisory Board.~~

(Source: P.A. 91-603, eff. 1-1-00.)

(225 ILCS 407/10-35)

(Section scheduled to be repealed on January 1, 2010)

Sec. 10-35. Completed 45-day permit sponsor card; termination by sponsoring auctioneer; inoperative status.

(a) No auctioneer or associate auctioneer shall conduct an auction or provide an auction service without being properly

sponsored by a licensed auctioneer or auction firm.

(b) The sponsoring auctioneer or sponsoring auction firm shall prepare upon forms provided by the Department ~~OBRE~~ and deliver to each auctioneer or associate auctioneer employed by or associated with the sponsoring auctioneer or sponsoring auction firm a properly completed duplicate 45-day permit sponsor card certifying that the person whose name appears thereon is in fact employed by or associated with said sponsoring auctioneer or sponsoring auction firm. The sponsoring auctioneer or sponsoring auction firm shall send the original 45-day permit sponsor card, along with a valid terminated license or other authorization as provided by rule and the appropriate fee, to the Department ~~OBRE~~ within 24 hours after the issuance of the sponsor card. It is a violation of this Act for any sponsoring auctioneer or sponsoring auction firm to issue a sponsor card to any auctioneer, associate auctioneer, or applicant, unless the auctioneer, associate auctioneer, or applicant presents in hand a valid terminated license or other authorization, as provided by rule.

(c) An auctioneer may be self-sponsored or may be sponsored by another licensed auctioneer or auction firm.

(d) An associate auctioneer must be sponsored by a licensed auctioneer or auction firm.

(e) When an auctioneer or associate auctioneer terminates his or her employment or association with a sponsoring auctioneer or sponsoring auction firm or the employment or

association is terminated by the sponsoring auctioneer or sponsoring auction firm, the terminated licensee shall obtain from that sponsoring auctioneer or sponsoring auction firm his or her license endorsed by the sponsoring auctioneer or sponsoring auction firm indicating the termination. The terminating sponsoring auctioneer or sponsoring auction firm shall send a copy of the terminated license within 5 days after the termination to the Department ~~OBRE~~ or shall notify the Department ~~OBRE~~ in writing of the termination and explain why a copy of the terminated license was not surrendered.

(f) The license of any auctioneer or associate auctioneer whose association with a sponsoring auctioneer or sponsoring auction firm has terminated shall automatically become inoperative immediately upon such termination, unless the terminated licensee accepts employment or becomes associated with a new sponsoring auctioneer or sponsoring auction firm pursuant to subsection (g) of this Section. An inoperative licensee under this Act shall not conduct an auction or provide auction services while the license is in inoperative status.

(g) When a terminated or inoperative auctioneer or associate auctioneer accepts employment or becomes associated with a new sponsoring auctioneer or sponsoring auction firm, the new sponsoring auctioneer or sponsoring auction firm shall send to the Department ~~OBRE~~ a properly completed 45-day permit sponsor card, the terminated license, and the appropriate fee.

(Source: P.A. 91-603, eff. 1-1-00.)

(225 ILCS 407/10-40)

(Section scheduled to be repealed on January 1, 2010)

Sec. 10-40. Restoration.

(a) A licensee whose license has lapsed or expired shall have 2 years from the expiration date to restore his or her license without examination. The expired licensee shall make application to the Department ~~OBRE~~ on forms provided by the Department ~~OBRE~~, including a properly completed 45-day permit sponsor card, provide evidence of successful completion of 12 hours of approved continuing education during the period of time the license had lapsed, and pay all lapsed fees and penalties as established by administrative rule.

(b) Notwithstanding any other provisions of this Act to the contrary, any licensee whose license under this Act has expired is eligible to restore such license without paying any lapsed fees and penalties provided that the license expired while the licensee was:

(1) on active duty with the United States Army, United States ~~State~~ Marine Corps, United States Navy, United States Air Force, United States Coast Guard, the State Militia called into service or training;

(2) engaged in training or education under the supervision of the United States prior to induction into military service; or

(3) serving as an employee of the Department ~~OBRE~~,

while the employee was required to surrender his or her license due to a possible conflict of interest.

A licensee shall be eligible to restore a license under the provisions of this subsection for a period of 2 years following the termination of the service, education, or training by providing a properly completed application and 45-day permit sponsor card, provided that the termination was by other than dishonorable discharge and provided that the licensee furnishes the Department ~~OBRE~~ with an affidavit specifying that the licensee has been so engaged.

(c) At any time after the suspension, revocation, placement on probationary status, or other disciplinary action taken under this Act with reference to any license, the Department ~~OBRE~~ may restore the license to the licensee without examination upon the order of the Secretary ~~Commissioner~~, if the licensee submits a properly completed application and 45-day permit sponsor card, pays appropriate fees, and otherwise complies with the conditions of the order.

(Source: P.A. 91-603, eff. 1-1-00; revised 10-11-05.)

(225 ILCS 407/10-45)

(Section scheduled to be repealed on January 1, 2010)

Sec. 10-45. Nonresident auctioneer reciprocity.

(a) A person holding a license to engage in auctions issued to him or her by the proper authority of a state, territory, or possession of the United States of America or the District of

Columbia that has licensing requirements equal to or substantially equivalent to the requirements of this State and that otherwise meets the requirements of this Act may obtain a license under this Act without examination, provided:

(1) that the Department ~~OBRE~~ has entered into a valid reciprocal agreement with the proper authority of the state, territory, or possession of the United States of America or the District of Columbia from which the nonresident applicant has a valid license;

(2) that the applicant provides the Department ~~OBRE~~ with a certificate of good standing from the applicant's resident state;

(3) that the applicant completes and submits an application as provided by the Department ~~OBRE~~; and

(4) that the applicant pays all applicable fees required under this Act.

(b) A nonresident applicant shall file an irrevocable consent with the Department ~~OBRE~~ that actions may be commenced against the applicant or nonresident licensee in a court of competent jurisdiction in this State by the service of summons, process, or other pleading authorized by the law upon the Secretary ~~Commissioner~~. The consent shall stipulate and agree that service of the process, summons, or pleading upon the Secretary ~~Commissioner~~ shall be taken and held in all courts to be valid and binding as if actual service had been made upon the applicant in Illinois. If a summons, process, or other

pleading is served upon the Secretary ~~Commissioner~~, it shall be by duplicate copies, one of which shall be retained by the Department ~~OBRE~~ and the other immediately forwarded by certified or registered mail to the last known business address of the applicant or nonresident licensee against whom the summons, process, or other pleading may be directed.

(Source: P.A. 91-603, eff. 1-1-00.)

(225 ILCS 407/10-50)

(Section scheduled to be repealed on January 1, 2010)

Sec. 10-50. Fees. Fees shall be determined by rule and shall be non-refundable. ~~The OBRE shall provide by administrative rule for fees to be paid by applicants, licensees, and schools to cover the reasonable costs of the OBRE in administering and enforcing the provisions of this Act.~~ The Department ~~OBRE~~ shall provide by administrative rule for fees to be collected from licensees and applicants to cover the statutory requirements for funding the Auctioneer Recovery Fund. The Department ~~OBRE~~ may also provide by administrative rule for general fees to cover the reasonable expenses of carrying out other functions and responsibilities under this Act.

(Source: P.A. 91-603, eff. 1-1-00.)

(225 ILCS 407/20-5)

(Section scheduled to be repealed on January 1, 2010)

Sec. 20-5. Unlicensed practice; civil penalty.

(a) Any person who practices, offers to practice, attempts to practice, or holds oneself out to practice as an auctioneer, an associate auctioneer, an auction firm, or any other licensee under this Act without being licensed under this Act shall, in addition to any other penalty provided by law, pay a civil penalty ~~fine~~ to the Department ~~OBRE~~ in an amount not to exceed \$10,000 for each offense as determined by the Department ~~OBRE~~. The civil penalty ~~fine~~ shall be assessed by the Department ~~OBRE~~ after a hearing is held in accordance with the provisions set forth in this Act regarding a hearing for the discipline of a license.

(b) The Department ~~OBRE~~ has the authority and power to investigate any and all unlicensed activity pursuant to this Act.

(c) The civil penalty ~~fine~~ shall be paid within 60 days after the effective date of the order imposing the civil penalty ~~fine~~. The order shall constitute a judgment ~~judgement~~ and may be filed and execution had thereon in the same manner from any court of record.

(d) Conducting an auction or providing an auction service in Illinois without holding a valid and current license under this Act is declared to be adverse to the public welfare, to constitute a public nuisance, and to cause irreparable harm to the public welfare. The Secretary ~~Commissioner~~, the Attorney General, the State's Attorney of any county in the State, or

any other person may maintain an action in the name of the People of the State of Illinois and may apply for injunctive relief in any circuit court to enjoin the person or entity from engaging in such practice.

Upon the filing of a verified petition in a circuit court, the court, if satisfied by affidavit or otherwise that the person or entity has been engaged in the practice of auctioning without a valid and current license, may enter a temporary restraining order without notice or bond enjoining the defendant from further practice. Only the showing of non-licensure, by affidavit or otherwise, is necessary in order for a temporary injunction to be issued. A copy of the verified complaint shall be served upon the defendant and the proceedings shall thereafter be conducted as in other civil cases except as modified by this Section. If it is established that the defendant has been or is engaged in unlawful practice, the court may enter an order or judgment perpetually enjoining the defendant from further practice. In all proceedings hereunder, the court, in its discretion, may apportion the costs among the parties interested in the action, including cost of filing the complaint, service of process, witness fees and expenses, court reporter charges, and reasonable attorneys' fees. In case of violation of any injunctive order entered under the provisions of this Section, the court may summarily try and punish the offender for contempt of court. These injunction proceedings shall be in addition to, and not

in lieu of, all penalties and other remedies provided in this Act.

(Source: P.A. 91-603, eff. 1-1-00.)

(225 ILCS 407/20-15)

(Section scheduled to be repealed on January 1, 2010)

Sec. 20-15. Disciplinary actions; grounds. The Department ~~OBRE~~ may refuse to issue or renew a license, may place on probation or administrative supervision, suspend, or revoke any license or may reprimand or take other disciplinary or non-disciplinary action as the Department may deem proper, including the imposition of fines ~~otherwise discipline or impose a civil fine~~ not to exceed \$10,000 for each violation upon anyone licensed under this Act for any of the following reasons ~~upon any licensee hereunder for any one or any combination of the following causes:~~

(1) False or fraudulent representation or material misstatement in furnishing information to the Department ~~OBRE~~ in obtaining or seeking to obtain a license.

(2) Violation of any provision of this Act or the rules promulgated pursuant to this Act.

(3) Conviction of or entry of a plea of guilty or nolo contendere to any crime that is a felony, an essential element of which is dishonesty or fraud, or larceny, embezzlement, or obtaining money, property, or credit by false pretenses or by means of a confidence game,

conviction in this or another state of a crime that is a felony under the laws of this State, or conviction of a felony in a federal court.

(4) Being adjudged to be a person under legal disability or subject to involuntary admission or to meet the standard for judicial admission as provided in the Mental Health and Developmental Disabilities Code.

(5) Discipline of a licensee by another state, the District of Columbia, a territory of the United States, a foreign nation, a governmental agency, or any other entity authorized to impose discipline if at least one of the grounds for that discipline is the same as or the equivalent to one of the grounds for discipline set forth in this Act or for failing to report to the Department ~~OPRE~~, within 30 days, any adverse final action taken against the licensee by any other licensing jurisdiction, government agency, law enforcement agency, or court, or liability for conduct that would constitute grounds for action as set forth in this Act.

(6) Engaging in the practice of auctioneering, conducting an auction, or providing an auction service without a license or after the license was expired, revoked, suspended, or terminated or while the license was inoperative.

(7) Attempting to subvert or cheat on the auctioneer exam or any continuing education exam, or aiding or

abetting another to do the same.

(8) Directly or indirectly giving to or receiving from a person, firm, corporation, partnership, or association a fee, commission, rebate, or other form of compensation for professional service not actually or personally rendered.

(9) Making any substantial misrepresentation or untruthful advertising.

(10) Making any false promises of a character likely to influence, persuade, or induce.

(11) Pursuing a continued and flagrant course of misrepresentation or the making of false promises through a licensee, agent, employee, advertising, or otherwise.

(12) Any misleading or untruthful advertising, or using any trade name or insignia of membership in any auctioneer association or organization of which the licensee is not a member.

(13) Commingling funds of others with his or her own funds or failing to keep the funds of others in an escrow or trustee account.

(14) Failure to account for, remit, or return any moneys, property, or documents coming into his or her possession that belong to others, acquired through the practice of auctioneering, conducting an auction, or providing an auction service within 30 days of the written request from the owner of said moneys, property, or documents.

(15) Failure to maintain and deposit into a special account, separate and apart from any personal or other business accounts, all moneys belonging to others entrusted to a licensee while acting as an auctioneer, associate auctioneer, auction firm, or as a temporary custodian of the funds of others.

(16) Failure to make available to Department ~~OBRE~~ personnel during normal business hours all escrow and trustee records and related documents maintained in connection with the practice of auctioneering, conducting an auction, or providing an auction service within 24 hours after a request from Department ~~OBRE~~ personnel.

(17) Making or filing false records or reports in his or her practice, including but not limited to false records or reports filed with State agencies.

(18) Failing to voluntarily furnish copies of all written instruments prepared by the auctioneer and signed by all parties to all parties at the time of execution.

(19) Failing to provide information within 30 days in response to a written request made by the Department ~~OBRE~~.

(20) Engaging in any act that constitutes a violation of Section 2-102, 3-103, or 3-105 of the Illinois Human Rights Act.

(21) Causing a payment from the Auction Recovery Fund.

(22) Engaging in dishonorable, unethical, or unprofessional conduct of a character likely to deceive,

defraud, or harm the public.

(23) Offering or advertising real estate for sale or lease at auction without a valid broker or salesperson's license under the Real Estate License Act of 1983, or any successor Act, unless exempt from licensure under the terms of the Real Estate License Act of 2001 ~~1983~~, or any successor Act.

(24) Physical illness, mental illness, or other impairment including without limitation deterioration through the aging process, mental illness, or disability that results in the inability to practice the profession with reasonable judgment, skill, and safety.

(25) A pattern of practice or other behavior that demonstrates incapacity or incompetence to practice under this Act.

(26) Being named as a perpetrator in an indicated report by the Department of Children and Family Services under the Abused and Neglected Child Reporting Act and upon proof by clear and convincing evidence that the licensee has caused a child to be an abused child or a neglected child as defined in the Abused and Neglected Child Reporting Act.

(27) Habitual or excessive use or addiction to alcohol, narcotics, stimulants, or any other chemical agent or drug that results in a licensee's inability to practice with reasonable judgment, skill, or safety.

(28) Wilfully failing to report an instance of suspected child abuse or neglect as required by the Abused and Neglected Child Reporting Act.

The entry of an order by a circuit court establishing that any person holding a license under this Act is subject to involuntary admission or judicial admission, as provided for in the Mental Health and Developmental Disabilities Code, operates as an automatic suspension of that license. That person may have his or her license restored only upon the determination by a circuit court that the patient is no longer subject to involuntary admission or judicial admission and the issuance of an order so finding and discharging the patient and upon the Board's recommendation to the Department that the license be restored. Where circumstances so indicate, the Board may recommend to the Department that it require an examination prior to restoring a suspended license.

If the Department or Board finds an individual unable to practice because of the reasons set forth in this Section, the Department or Board may require that individual to submit to care, counseling, or treatment by physicians approved or designated by the Department or Board, as a condition, term, or restriction for continued, reinstated, or renewed licensure to practice; or, in lieu of care, counseling, or treatment, the Department may file, or the Board may recommend to the Department to file, a complaint to immediately suspend, revoke, or otherwise discipline the license of the individual. An

individual whose license was granted, continued, reinstated, renewed, disciplined or supervised subject to such terms, conditions, or restrictions, and who fails to comply with such terms, conditions, or restrictions, shall be referred to the Secretary for a determination as to whether the individual shall have his or her license suspended immediately, pending a hearing by the Department. In instances in which the Secretary immediately suspends a person's license under this Section, a hearing on that person's license must be convened by the Department within 21 days after the suspension and completed without appreciable delay. The Department and Board shall have the authority to review the subject individual's record of treatment and counseling regarding the impairment to the extent permitted by applicable federal statutes and regulations safeguarding the confidentiality of medical records.

An individual licensed under this Act and affected under this Section shall be afforded an opportunity to demonstrate to the Department or Board that he or she can resume practice in compliance with acceptable and prevailing standards under the provisions of his or her license.

In enforcing this Section, the Department or Board, upon a showing of a possible violation, may compel an individual licensed to practice under this Act, or who has applied for licensure under this Act, to submit to a mental or physical examination, or both, as required by and at the expense of the Department. The Department or Board may order the examining

physician to present testimony concerning the mental or physical examination of the licensee or applicant. No information shall be excluded by reason of any common law or statutory privilege relating to communications between the licensee or applicant and the examining physician. The examining physicians shall be specifically designated by the Board or Department. The individual to be examined may have, at his or her own expense, another physician of his or her choice present during all aspects of this examination. Failure of an individual to submit to a mental or physical examination when directed shall be grounds for suspension of his or her license until the individual submits to the examination, if the Department finds that, after notice and hearing, the refusal to submit to the examination was without reasonable cause.

(Source: P.A. 91-603, eff. 1-1-00.)

(225 ILCS 407/20-20)

(Section scheduled to be repealed on January 1, 2010)

Sec. 20-20. Termination without hearing for failure to pay taxes, child support, or a student loan. The Department ~~OBRE~~ may terminate or otherwise discipline any license issued under this Act without hearing if the appropriate administering agency provides adequate information and proof that the licensee has:

- (1) failed to file a return, to pay the tax, penalty, or interest shown in a filed return, or to pay any final

assessment of tax, penalty, or interest, as required by any tax act administered by the Illinois Department of Revenue until the requirements of the tax act are satisfied;

(2) failed to pay any court ordered child support as determined by a court order or by referral from the Department of Healthcare and Family Services (formerly Illinois Department of Public Aid); or

(3) failed to repay any student loan or assistance as determined by the Illinois Student Assistance Commission. If a license is terminated or otherwise disciplined pursuant to this Section, the licensee may request a hearing as provided by this Act within 30 days of notice of termination or discipline.

(Source: P.A. 91-603, eff. 1-1-00; revised 12-15-05.)

(225 ILCS 407/20-25)

(Section scheduled to be repealed on January 1, 2010)

Sec. 20-25. Investigation. The Department ~~OBRE~~ may investigate the actions or qualifications of any person or persons holding or claiming to hold a license under this Act, ~~who shall hereinafter be called the respondent.~~

(Source: P.A. 91-603, eff. 1-1-00.)

(225 ILCS 407/20-30)

(Section scheduled to be repealed on January 1, 2010)

Sec. 20-30. Consent orders. Notwithstanding any provisions

concerning the conduct of hearings and recommendations for disciplinary actions, the Department ~~OBRE~~ has the authority to negotiate agreements with licensees and applicants resulting in disciplinary consent orders. The consent orders may provide for any form of discipline provided for in this Act. The consent orders shall provide that they were not entered into as a result of any coercion by the Department ~~OBRE~~. Any consent order shall be accepted by or rejected by the Secretary ~~Commissioner~~ in a timely manner.

(Source: P.A. 91-603, eff. 1-1-00.)

(225 ILCS 407/20-35)

(Section scheduled to be repealed on January 1, 2010)

Sec. 20-35. Subpoenas; attendance of witnesses; oaths.

(a) The Department ~~OBRE~~ shall have the power to issue subpoenas ad testificandum (subpoena for documents) and to bring before it any persons and to take testimony, either orally or by deposition or both, with the same fees and mileage and in the same manner as prescribed in civil cases in the courts of this State. The Department ~~OBRE~~ shall have the power to issue subpoenas duces tecum and to bring before it any documents, papers, files, books, and records with the same costs and in the same manner as prescribed in civil cases in the courts of this State.

(b) Any circuit court may, upon application of the Department ~~OBRE~~ or its designee or of the applicant, licensee,

or person holding a certificate of licensure against whom proceedings under this Act are pending, enter an order compelling the enforcement of any Department ~~OBRE~~ subpoena issued in connection with any hearing or investigation.

(c) The Secretary ~~Commissioner~~ or his or her designee or the Board shall have power to administer oaths to witnesses at any hearing that the Department ~~OBRE~~ is authorized to conduct and any other oaths authorized in any Act administered by the Department ~~OBRE~~.

(Source: P.A. 91-603, eff. 1-1-00.)

(225 ILCS 407/20-40)

(Section scheduled to be repealed on January 1, 2010)

Sec. 20-40. Hearings; record of hearings.

(a) The Department ~~OBRE~~ shall have the authority to conduct hearings before the Advisory Board on proceedings to revoke, suspend, place on probation or administrative review, reprimand, or refuse to issue or renew any license under this Act or to impose a civil penalty not to exceed \$10,000 upon any licensee under this Act.

(b) The Department ~~OBRE~~, at its expense, shall preserve a record of all proceedings at the formal hearing of any case involving the discipline of any license under this Act. The notice of hearing, complaint and all other documents in the nature of pleadings and written motions filed in the proceedings, the transcript of testimony, the report of the

Board, and the order of the Department ~~OBRE~~ shall be the record of proceeding. At all hearings or prehearing conference, the Department ~~OBRE~~ and the respondent shall be entitled to have a court reporter in attendance for purposes of transcribing the proceeding or prehearing conference.

(Source: P.A. 91-603, eff. 1-1-00.)

(225 ILCS 407/20-45)

(Section scheduled to be repealed on January 1, 2010)

Sec. 20-45. Notice. The Department ~~OBRE~~ shall (i) notify the respondent in writing at least 30 days prior to the date set for the hearing of any charges made and the time and place for the hearing of the charges to be heard under oath and (ii) inform the respondent that, upon failure to file an answer before the date originally set for the hearing, default will be taken against the respondent and the respondent's license may be suspended, revoked, or otherwise disciplined as the Department ~~OBRE~~ may deem proper before taking any disciplinary action with regard to any license under this Act.

If the respondent fails to file an answer after receiving notice, the respondent's license may, in the discretion of the Department ~~OBRE~~, be revoked, suspended, or otherwise disciplined as deemed proper, without a hearing, if the act or acts charged constitute sufficient grounds for such action under this Act.

At the time and place fixed in the notice, the Department

~~OPRE~~ shall proceed to hearing of the charges and both the respondent and the complainant shall be accorded ample opportunity to present in person or by counsel such statements, testimony, evidence, and argument as may be pertinent to the charges or any defense thereto.

(Source: P.A. 91-603, eff. 1-1-00.)

(225 ILCS 407/20-50)

(Section scheduled to be repealed on January 1, 2010)

Sec. 20-50. Board's findings of fact, conclusions of law, and recommendation to the Secretary ~~Commissioner~~. At the conclusion of the hearing, the Advisory Board shall present to the Secretary ~~Commissioner~~ a written report of its findings of facts, conclusions of law, and recommendations regarding discipline or a fine. The report shall contain a finding whether or not the accused person violated this Act or failed to comply with the conditions required in this Act. The Advisory Board shall specify the nature of the violation or failure to comply and shall make its recommendations to the Secretary ~~Commissioner~~.

If the Secretary ~~Commissioner~~ disagrees in any regard with the report of the Advisory Board, the Secretary ~~Commissioner~~ may issue an order in contravention of the report. The Secretary ~~Commissioner~~ shall provide a written report to the Advisory Board on any deviation and shall specify with particularity the reasons for that action in the final order.

(Source: P.A. 91-603, eff. 1-1-00.)

(225 ILCS 407/20-55)

(Section scheduled to be repealed on January 1, 2010)

Sec. 20-55. Motion for rehearing; rehearing. In any hearing involving the discipline of a license, a copy of the Advisory Board's report shall be served upon the respondent by the Department ~~OBRE~~, either personally or as provided in this Act for the service of the notice of hearing. Within 20 calendar days after the service, the respondent may present to the Department ~~OBRE~~ a motion in writing for a rehearing, which shall specify the particular grounds for rehearing.

If no motion for rehearing is filed, then upon the expiration of the time specified for filing a motion, or if a motion for rehearing is denied, then upon denial, the Secretary ~~Commissioner~~ may enter an order in accordance with the recommendations of the Advisory Board, except as provided for in this Act. If the respondent orders a transcript of the record from the reporting service and pays for it within the time for filing a motion for rehearing, the 20 calendar day period within which a motion for rehearing may be filed shall commence upon the delivery of the transcript to the respondent.

Whenever the Secretary ~~Commissioner~~ is not satisfied that substantial justice has been done in the hearing or in the Advisory Board's report, the Secretary ~~Commissioner~~ may order a rehearing by the same.

(Source: P.A. 91-603, eff. 1-1-00.)

(225 ILCS 407/20-60)

(Section scheduled to be repealed on January 1, 2010)

Sec. 20-60. Order; certified copy. An order or a certified copy of an order, over the seal of the Department ~~OBRE~~ and purporting to be signed by the Secretary ~~Commissioner~~ or his or her designee, shall be prima facie proof that:

(1) the signature is the genuine signature of the Secretary ~~Commissioner~~ or his or her designee;

(2) the Secretary ~~Commissioner~~ is duly appointed and qualified; and

(3) the Advisory Board is duly appointed and qualified.

(Source: P.A. 91-603, eff. 1-1-00.)

(225 ILCS 407/20-65)

(Section scheduled to be repealed on January 1, 2010)

Sec. 20-65. Restoration of license. At any time after the suspension or revocation of any license, the Department ~~OBRE~~ may restore the license to the accused person upon the written recommendation of the Advisory Board, unless after an investigation and a hearing the Advisory Board determines that restoration is not in the public interest.

(Source: P.A. 91-603, eff. 1-1-00.)

(225 ILCS 407/20-70)

(Section scheduled to be repealed on January 1, 2010)

Sec. 20-70. Surrender of license. Upon the revocation or suspension of any license the licensee shall immediately surrender the license to the Department ~~OBRE~~. If the licensee fails to do so, the Department ~~OBRE~~ shall have the right to seize the license.

(Source: P.A. 91-603, eff. 1-1-00.)

(225 ILCS 407/20-75)

(Section scheduled to be repealed on January 1, 2010)

Sec. 20-75. Administrative Review Law. All final administrative decisions of the Department ~~OBRE~~ are subject to judicial review under the Administrative Review Law and its rules. The term "administrative decision" is defined as in Section 3-101 of the Code of Civil Procedure.

Proceedings for judicial review shall be commenced in the circuit court of the county in which the party applying for review resides, but if the party is not a resident of this State, the venue shall be in Cook or Sangamon County.

Pending final decision on the review, the acts, orders, sanctions, and rulings of the Department ~~OBRE~~ regarding any license shall remain in full force and effect, unless modified or suspended by a court order pending final judicial decision. The Department ~~OBRE~~ shall not be required to certify any record to the court, file any answer in court, or otherwise appear in any court in a judicial review proceeding, unless there is

filed in the court, with the complaint, a receipt from the Department ~~OBRE~~ acknowledging payment of the costs of furnishing and certifying the record. Failure on the part of the plaintiff to file a receipt in court shall be grounds for dismissal of the action.

(Source: P.A. 91-603, eff. 1-1-00.)

(225 ILCS 407/20-80)

(Section scheduled to be repealed on January 1, 2010)

Sec. 20-80. Summary suspension. The Secretary ~~Commissioner~~ may temporarily suspend any license pursuant to this Act, without hearing, simultaneously with the institution of proceedings for a hearing provided for in this Act, if the Secretary ~~Commissioner~~ finds that the evidence indicates that the public interest, safety, or welfare requires emergency action. In the event that the Secretary ~~Commissioner~~ temporarily suspends any license without a hearing, a hearing shall be held within 30 calendar days after the suspension has begun. The suspended licensee may seek a continuance of the hearing during which the suspension shall remain in effect. The proceeding shall be concluded without appreciable delay.

(Source: P.A. 91-603, eff. 1-1-00.)

(225 ILCS 407/20-90)

(Section scheduled to be repealed on January 1, 2010)

Sec. 20-90. Cease and desist orders. The Department ~~OBRE~~

may issue cease and desist orders to persons who engage in activities prohibited by this Act. Any person in violation of a cease and desist order obtained by the Department ~~OBRE~~ is subject to all of the remedies provided by law.

(Source: P.A. 91-603, eff. 1-1-00.)

(225 ILCS 407/20-95)

(Section scheduled to be repealed on January 1, 2010)

Sec. 20-95. Returned checks; fine. A person who delivers a check or other payment to the Department ~~OBRE~~ that is returned to the Department ~~OBRE~~ unpaid by the financial institution upon which it is drawn shall pay to the Department ~~OBRE~~, in addition to the amount already owed to the Department ~~OBRE~~, a fee of \$50. The Department ~~OBRE~~ shall notify the person that his or her check has been returned and that the person shall pay to the Department ~~OBRE~~ by certified check or money order the amount of the returned check plus the \$50 fee within 30 calendar days after the date of the notification. If, after the expiration of 30 calendar days of the notification, the person has failed to submit the necessary remittance, the Department ~~OBRE~~ shall automatically terminate the license or deny the application without a hearing. If, after termination or denial, the person seeks a license, he or she shall petition the Department ~~OBRE~~ for restoration and he or she may be subject to additional discipline or fines. The Secretary ~~Commissioner~~ may waive the fines due under this Section in individual cases

where the Secretary ~~Commissioner~~ finds that the fines would be unreasonable or unnecessarily burdensome.

(Source: P.A. 91-603, eff. 1-1-00; 92-146, eff. 1-1-02.)

(225 ILCS 407/20-100 new)

(Section scheduled to be repealed on January 1, 2010)

Sec. 20-100. Violations. A person who is found to have violated any provision of this Act is guilty of a Class A misdemeanor for the first offense and a Class 4 felony for the second and any subsequent offense.

(225 ILCS 407/30-5)

(Section scheduled to be repealed on January 1, 2010)

Sec. 30-5. The Department ~~OBRE~~; powers and duties. The Department ~~OBRE~~ shall exercise the powers and duties prescribed by the Civil Administrative Code of Illinois for the administration of licensing acts and shall exercise such other powers and duties as prescribed by this Act. The Department ~~OBRE~~ may contract with third parties for services necessary for the proper administration of this Act.

(Source: P.A. 91-603, eff. 1-1-00.)

(225 ILCS 407/30-10)

(Section scheduled to be repealed on January 1, 2010)

Sec. 30-10. Rules. The Department ~~OBRE~~, after notifying and considering the recommendations of the Advisory Board, if any,

shall adopt any rules that may be necessary for the administration, implementation and enforcement of this Act.

(Source: P.A. 91-603, eff. 1-1-00.)

(225 ILCS 407/30-15)

(Section scheduled to be repealed on January 1, 2010)

Sec. 30-15. Auction Regulation Administration Fund. A special fund to be known as the Auction Regulation Administration Fund is created in the State Treasury. All fees received by the Department ~~OBRE~~ under this Act shall be deposited into the Auction Regulation Administration Fund. Subject to appropriation, the moneys deposited into the Auction Regulation Administration Fund shall be used by the Department ~~OBRE~~ for the administration of this Act. Moneys in the Auction Regulation Administration Fund may be invested and reinvested in the same manner as authorized for pension funds in Article 14 of the Illinois Pension Code. All earnings, interest, and dividends received from investment of funds in the Auction Regulation Administration Fund shall be deposited into the Auction Regulation Administration Fund and shall be used for the same purposes as other moneys deposited in the Auction Regulation Administration Fund.

This fund shall be created on July 1, 1999. The State Treasurer shall cause a transfer of \$300,000 to the Auction Regulation Administration Fund from the Real Estate License Administration Fund on August 1, 1999. The State Treasurer

shall cause a transfer of \$200,000 on August 1, 2000 and a transfer of \$100,000 on January 1, 2002 from the Auction Regulation Administration Fund to the Real Estate License Administration Fund, or if there is a sufficient fund balance in the Auction Regulation Administration Fund to properly administer this Act, the Department ~~OBRE~~ may recommend to the State Treasurer to cause a transfer from the Auction Regulation Administration Fund to the Real Estate License Administration Fund on a date and in an amount which is accelerated, but not less than set forth in this Section. In addition to the license fees required under this Act, each initial applicant for licensure under this Act shall pay to the Department ~~OBRE~~ an additional \$100 for deposit into the Auction Regulation Administration Fund for a period of 2 years or until such time the original transfer amount to the Auction Regulation Administration Fund from the Real Estate License Administration Fund is repaid.

Moneys in the Auction Regulation Administration Fund may be transferred to the Professions Indirect Cost Fund, as authorized under Section 2105-300 of the Department of Professional Regulation Law of the Civil Administrative Code of Illinois.

Upon completion of any audit of the Department ~~OBRE~~ as prescribed by the Illinois State Auditing Act, which includes an audit of the Auction Regulation Administration Fund, the Department ~~OBRE~~ shall make the audit open to inspection by any

interested party.

(Source: P.A. 94-91, eff. 7-1-05.)

(225 ILCS 407/30-20)

(Section scheduled to be repealed on January 1, 2010)

Sec. 30-20. Auction Recovery Fund. A special fund to be known as the Auction Recovery Fund is created in the State Treasury. The moneys in the Auction Recovery Fund shall be used by the Department ~~OBRE~~ exclusively for carrying out the purposes established pursuant to the provisions of Section 30-35 of this Act.

The sums received by the Department ~~OBRE~~ pursuant to the provisions of Sections 20-5 through Sections 20-20 of this Act shall be deposited into the State Treasury and held in the Auction Recovery Fund. In addition to the license fees required under this Act, each initial and renewal applicant shall pay to the Department ~~OBRE~~ an additional \$25 for deposit into the Auction Recovery Fund for a period of 2 years after the effective date of this Act. After such time the Auction Regulation Administration Fund has totally repaid the Real Estate License Administration Fund, the State Treasurer shall cause a transfer of \$50,000 from the Auction Regulation Administration Fund to the Auction Recovery Fund annually on January 1 so as to sustain a minimum balance of \$400,000 in the Auction Recovery Fund. If the fund balance in the Auction Recovery Fund on January 1 of any year after 2002 is less than

\$100,000, in addition to the renewal license fee required under this Act, each renewal applicant shall pay the Department ~~OBRE~~ an additional \$25 fee for deposit into the Auction Recovery Fund.

The funds held in the Auction Recovery Fund may be invested and reinvested in the same manner as funds in the Auction Regulation Administration Fund. All earnings received from investment may be deposited into the Auction Recovery Fund and may be used for the same purposes as other moneys deposited into the Auction Recovery Fund or may be deposited into the Auction Education Fund as provided in Section 30-25 of this Act and as established by rule.

(Source: P.A. 91-603, eff. 1-1-00.)

(225 ILCS 407/30-25)

(Section scheduled to be repealed on January 1, 2010)

Sec. 30-25. Auction Education Fund. A special fund to be known as the Auction Education Fund is created in the State Treasury. The Auction Education Fund shall be administered by the Department ~~OBRE~~. Subject to appropriation, moneys deposited into the Auction Education Fund may be used for the advancement of education in the auction industry, as established by rule. The moneys deposited in the Auction Education Fund may be invested and reinvested in the same manner as funds in the Auction Regulation Administration Fund. All earnings received from investment shall be deposited into

the Auction Education Fund and may be used for the same purposes as other moneys deposited into the Auction Education Fund.

(Source: P.A. 91-603, eff. 1-1-00.)

(225 ILCS 407/30-30)

(Section scheduled to be repealed on January 1, 2010)

Sec. 30-30. Auction Advisory Board.

(a) There is hereby created the Auction Advisory Board. The Advisory Board shall consist of 7 members and shall be appointed by the Secretary ~~Commissioner~~. In making the appointments, the Secretary ~~Commissioner~~ shall give due consideration to the recommendations by members and organizations of the industry, including but not limited to the Illinois State Auctioneers Association. Five ~~Four~~ members of the Advisory Board shall be licensed auctioneers, except that for the initial appointments, these members may be persons without a license, but who have been auctioneers for at least 5 years preceding their appointment to the Advisory Board. One member shall be a public member who represents the interests of consumers and who is not licensed under this Act or the spouse of a person licensed under this Act or who has any responsibility for management or formation of policy of or any financial interest in the auctioneering profession or any other connection with the profession. One member shall be actively engaged in the real estate industry and licensed as a broker or

salesperson. The Advisory Board shall annually elect one of its members to serve as Chairperson ~~One member shall be the Director of Auction Regulation, ex officio, and shall serve as the Chairperson of the Advisory Board.~~

(b) Members shall be appointed for a term of 4 years, except that of the initial appointments, 3 members shall be appointed to serve a term of 3 years and 4 members shall be appointed to serve a term of 4 years, ~~including the Director.~~ The Secretary ~~Commissioner~~ shall fill a vacancy for the remainder of any unexpired term. Each member shall serve on the Advisory Board until his or her successor is appointed and qualified. No person shall be appointed to serve more than 2 terms, including the unexpired portion of a term due to vacancy. To the extent practicable, the Secretary ~~Commissioner~~ shall appoint members to insure that the various geographic regions of the State are properly represented on the Advisory Board.

(c) A majority of the Advisory Board members currently appointed shall constitute a quorum. A vacancy in the membership of the Advisory Board shall not impair the right of a quorum to exercise all of the rights and perform all the duties of the Board.

(d) Each member of the Advisory Board shall receive a per diem stipend in an amount to be determined by the Secretary ~~Commissioner~~. Each member shall be paid his or her necessary expenses while engaged in the performance of his or her duties.

(e) Members of the Advisory Board shall be immune from suit in an action based upon any disciplinary proceedings or other acts performed in good faith as members of the Advisory Board.

(f) The Advisory Board shall meet monthly or as convened by the Chairperson.

(g) The Advisory Board shall advise the Department ~~OBRE~~ on matters of licensing and education and make recommendations to the Department ~~OBRE~~ on those matters and shall hear and make recommendations to the Secretary ~~Commissioner~~ on disciplinary matters that require a formal evidentiary hearing.

(h) The Secretary ~~Commissioner~~ shall give due consideration to all recommendations of the Advisory Board.

(Source: P.A. 91-603, eff. 1-1-00.)

(225 ILCS 407/30-40)

(Section scheduled to be repealed on January 1, 2010)

Sec. 30-40. Auction Recovery Fund; recovery; actions; procedures. The Department ~~OBRE~~ shall maintain an Auction Recovery Fund from which any person aggrieved by an act, representation, transaction, or the conduct of a duly licensed auctioneer, associate auctioneer or auction firm that constitutes a violation of this Act or the regulations promulgated pursuant thereto or that constitutes embezzlement of money or property or results in money or property being unlawfully obtained from any person by false pretenses, artifice, trickery, or forgery or by reason of any fraud,

misrepresentation, discrimination or deceit by or on the part of any licensee or the unlicensed employee of any auctioneer, associate auctioneer, or auction firm and that results in a loss of actual cash money as opposed to losses in market value, may recover. The aggrieved person may recover, by order of the circuit court of the county where the violation occurred, an amount of not more than \$10,000 from the fund for damages sustained by the act, representation, transaction, or conduct, together with the costs of suit and attorneys' fees incurred in connection therewith of not to exceed 15% of the amount of the recovery ordered paid from the Fund. However, no licensed auctioneer, associate auctioneer, or auction firm may recover from the Fund, unless the court finds that the person suffered a loss resulting from intentional misconduct. The court order shall not include interest on the judgment.

The maximum liability against the Fund arising out of any one act by any auctioneer, associate auctioneer, or auction firm shall be \$50,000, and the judgment order shall spread the award equitably among all aggrieved persons.

(Source: P.A. 91-603, eff. 8-16-99.)

(225 ILCS 407/30-45)

(Section scheduled to be repealed on January 1, 2010)

Sec. 30-45. Auction Recovery Fund; collection.

(a) No action for a judgment that subsequently results in an order for collection from the Auction Recovery Fund shall be

started later than 2 years after the date on which the aggrieved person knew or, through the use of reasonable diligence, should have known of the acts or omissions giving rise to a right of recovery from the Auction Recovery Fund.

(b) When any aggrieved person commences action for a judgment that may result in collection from the Auction Recovery Fund, the aggrieved person must name as parties to that action any and all individual auctioneers, associate auctioneers, auction firms, or their employees or agents who allegedly committed or are responsible for acts or omissions giving rise to a right of recovery from the Auction Recovery Fund. Failure to name these individuals as parties shall preclude recovery from the Auction Recovery Fund of any portion of the judgment received in the action.

(c) When any aggrieved person commences action for a judgment that may result in collection from the Auction Recovery Fund, the aggrieved person must notify the Department ~~OBRE~~ in writing to this effect at the time of the commencement of the action. Failure to so notify the Department ~~OBRE~~ shall preclude recovery from the Auction Recovery Fund of any portion of the judgment received in the action. After receiving notice of the commencement of such an action, the Department ~~OBRE~~, upon timely application, shall be permitted to intervene as a party to that action.

(d) When an aggrieved party commences action for a judgment that may result in collection from the Auction Recovery Fund

and the court in which the action is commenced enters judgment by default against the defendant and in favor of the aggrieved party, the court shall, upon motion of the Department ~~OBRE~~, set aside that judgment by default. After a judgment by default has been set aside, the Department ~~OBRE~~ shall appear as a party to that action and thereafter the court shall require proof of the allegations in the pleading upon which relief is sought.

(e) The aggrieved person shall give written notice to the Department ~~OBRE~~ within 30 days after the entry of any judgment that may result in collection from the Auction Recovery Fund. That aggrieved person shall provide the Department ~~OBRE~~ 20 days written notice of all supplementary proceeding so as to allow the Department ~~OBRE~~ to participate in all efforts to collect on the judgment.

(f) When any aggrieved person recovers a valid judgment in any court of competent jurisdiction against any licensee or an unlicensed employee or agent of any licensee on the grounds of fraud, misrepresentation, discrimination, or deceit, the aggrieved person may, upon the termination of all proceedings, including review and appeals in connection with the judgment, file a verified claim in the court in which the judgment was entered and, upon 30 days written notice to the Department ~~OBRE~~ and to the person against whom the judgment was obtained, may apply to the court for an order directing payment out of the Auction Recovery Fund of the amount unpaid upon the judgment, not including interest on the judgment, and subject to the

limitation stated in Section 30-40 of this Act. The aggrieved person must set out in that verified claim and at an evidentiary hearing to be held by the court that the aggrieved person:

(1) is not the spouse of the debtor or the personal representative of the spouse;

(2) has complied with all the requirements of this Section;

(3) has obtained a judgment stating the amount thereof and the amount owing thereon, not including interest thereon, at the date of the application;

(4) has made all reasonable searches and inquiries to ascertain whether the judgment debtor possesses real or personal property or other assets which may be sold or applied in satisfaction of the judgment;

(5) has discovered no personal or real property or other assets liable to be sold or applied, or has discovered certain of them, describing them owned by the judgment debtor and liable to be so applied, and has taken all necessary action and proceeding for the realization thereof, and the amount thereby realized was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due on the judgment after application of the amount realized;

(6) has diligently pursued all remedies against all the judgment debtors and all other persons liable to the

aggrieved person in the transaction for which recovery is sought from the Auction Recovery Fund;

(7) has filed an adversary action to have the debts declared non-dischargeable in any bankruptcy petition matter filed by any judgment debtor or person liable to the aggrieved person. The aggrieved person shall also be required to prove the amount of attorney's fees sought to be recovered and the reasonableness of those fees up to the maximum allowed pursuant to Section 30-40 of this Act.

(g) The court shall make an order directed to the Department ~~OBRE~~ requiring payment from the Auction Recovery Fund of whatever sum it finds to be payable upon the claim, pursuant to and in accordance with the limitations contained in Section 30-40 of this Act, if the court is satisfied, upon the hearing, of the truth of all matters required to be shown by the aggrieved person by subsection (f) of this Section and that the aggrieved person has fully pursued and exhausted all remedies available for recovering the amount awarded by the judgment of the court.

(h) If the Department ~~OBRE~~ pays from the Auction Recovery Fund any amount in settlement of a claim or toward satisfaction of a judgment against any licensee, or employee or agent of any licensee, the license of said licensee shall be automatically terminated without hearing upon the issuance of a court order authorizing payment from the Auction Recovery Fund. No petition for restoration of the license shall be heard until repayment

of the amount paid from the Auction Recovery Fund on their account has been made in full, plus interest at the rate prescribed in Section 12-109 of the Code of Civil Procedure. A discharge in bankruptcy shall not relieve a person from the penalties and disabilities provided in this subsection.

(i) If, at any time, the money deposited in the Auction Recovery Fund is insufficient to satisfy any duly authorized claim or portion thereof, the Department ~~OBRE~~ shall, when sufficient money has been deposited in the Auction Recovery Fund, satisfy such unpaid claims or portions thereof, in the order that the claims or portions thereof were originally filed, plus accumulated interest at the rate prescribed in Section 12-109 of the Code of Civil Procedure.

(Source: P.A. 91-603, eff. 1-1-00.)

(225 ILCS 407/30-50)

(Section scheduled to be repealed on January 1, 2010)

Sec. 30-50. Contractual agreements. The Department ~~OBRE~~ may enter into contractual agreements with third parties to carry out the provisions of this Act.

(Source: P.A. 91-603, eff. 1-1-00.)

(225 ILCS 407/30-55)

(Section scheduled to be repealed on January 1, 2010)

Sec. 30-55. Reciprocal agreements. The Department ~~OBRE~~ shall have the authority to enter into reciprocal licensing

agreements with the proper authority of a state, territory, or possession of the United States or the District of Columbia having licensing requirements equal to or substantially equivalent to the requirements of this State.

(Source: P.A. 91-603, eff. 1-1-00.)

(225 ILCS 407/10-25 rep.)

(225 ILCS 407/Art. 25 rep.)

(225 ILCS 407/30-5 rep.)

Section 10. The Auction License Act is amended by repealing Sections 10-25 and 30-5 and Article 25.